

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
3 SOUTHERN DIVISION

4 GARY BRICE MCBAY,
5 Plaintiff,

6 VERSUS CIVIL ACTION NO: 1:07CV1205-LG-RHW

7 HARRISON COUNTY, MISSISSIPPI,
8 BY AND THROUGH ITS BOARD OF
9 SUPERVISORS; HARRISON COUNTY
10 SHERIFF GEORGE PAYNE; WAYNE
11 PAYNE; DIANE GASTON RILEY;
12 STEVE CAMPBELL; RICK GASTON;
13 RYAN TEEL; MORGAN THOMPSON;
14 JOHN DOES 1 - 4; AMERICAN
15 CORRECTIONAL ASSOCIATION;
16 JAMES A. GONDLES, JR.; UNKNOWN
17 DEFENDANTS 1 - 3 EMPLOYEES OF
18 AMERICAN CORRECTIONAL
19 ASSOCIATION; HEALTH ASSURANCE,
20 LLC, AND UNKNOWN DEFENDANTS 1
21 - 2 EMPLOYEES OF AMERICAN
22 CORRECTIONAL ASSOCIATION,
23 Defendants.

24

DEPOSITION OF THOMAS RANDAZZO

25 Taken at the offices of Dukes, Dukes,
26 Keating & Faneca, 2909 13th Street,
27 Sixth Floor, Gulfport, Mississippi, on
28 Thursday, July 9, 2009, beginning at
29 9:32 a.m.

30 **ORIGINAL**

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1 understand the question; is that fair enough?

2 A. Yes, sir.

3 Q. And sometimes folks will make an
4 objection or something. If they do, if you'll
5 just pause a moment so that we can deal with that,
6 if they object to the form of the question or the
7 responsiveness of your answer.

8 And I'll try not to talk on top of you
9 if you'll let me finish my question, even if you
10 anticipate what it's going to be, so that the
11 court reporter here doesn't have to try to take
12 down two people talking at one time, okay?

13 A. Okay.

14 Q. We're here about an incident that
15 happened November 6th, 2005 at the Choppers Lounge
16 in Gulfport. What was your involvement? Were you
17 there the night of November 6th, 2005?

18 A. Yes. We had been in the bar playing
19 pool in a pool tournament. The gentleman in
20 question had been asked to leave. Visibly
21 intoxicated.

22 Q. Who asked him to leave?

23 A. The bartenders. They had cut him off,
24 asked him -- you know, you need to go sleep, get a
25 ride home, whatever.

1 A. Well, I ran their pool tournaments on
2 weekends, Friday, Saturday and Sundays.
3 Unofficial bouncer. Whenever trouble would pop up
4 in the bar, myself or the owner, one of us, would
5 try to calm it down, you know, get control of the
6 incident.

7 The night in question, he was asked to
8 leave. I watched him walk outside. He's bumping
9 into cars. I mean, he's really intoxicated.

10 Q. Did you speak with him before --

11 A. Not before he went out the door. I
12 followed him out, tried to call him, hey, let us
13 call you a cab or sleep in your truck. He just
14 kept walking, got in his truck.

15 Q. Was this a parking lot outside the bar?

16 A. Yes, sir. It was attached to the bar
17 itself. I mean, it's only maybe 30 foot out to
18 the road itself.

19 Q. What road is that?

20 A. I can't remember the name of it.

21 Q. Is it a paved road?

22 A. Yes, sir.

23 Q. Okay.

24 A. He climbed in his truck, which was quite
25 high off the ground, the bottom of it was. The

1 door still open. I talked to him, said, look,
2 give me your keys, sleep in your truck, get the
3 keys in the morning, you don't need to be on the
4 road driving. He was really drunk. He continued
5 to argue with me. I said, look, let us call you a
6 cab, sleep in your truck or something, don't
7 drive. I said, I don't want to call the police on
8 you. Well, at that time, he swung at me.

9 Q. Did he hit you?

10 A. Glancing. I mean, it was a glancing
11 blow. So I pulled him out of his truck.

12 Q. How did you do that?

13 A. Grabbed him by his shirt and pulled.

14 Q. Did you pull him all the way out?

15 A. Yes, sir.

16 Q. Where did he go?

17 A. He landed on the ground right next to --
18 in front of me, actually. I picked him up. I
19 said, look, I don't want to call the police, sleep
20 in your truck or get a cab, you don't need to be
21 driving.

22 Q. What happened next?

23 A. He swung at me again.

24 Q. Did he hit you that time?

25 A. Yes, sir, he did. He caught me in the

1 jaw that time.

2 Q. What did you do?

3 A. I hit him back. He went to the ground.

4 I picked him up, walked him over to the building.

5 Q. Was he able to walk?

6 A. He was able to walk, staggering, but he
7 was able to.

8 Q. When you said you pulled him out of the
9 truck to the ground, what kind of ground are we
10 talking about, grass, gravel, pavement?

11 A. Actually it's a mixture of grass, sand,
12 gravel. Once I got him to the wall, my then
13 girlfriend, which is now my wife, walked outside.
14 I told her, call the sheriff's department. He
15 commenced to swing at me again.

16 Q. Did he hit you?

17 A. No. I put him to the ground.

18 Q. How did you do that?

19 A. I grabbed the back of him and put him
20 down.

21 Q. Face down?

22 A. Yes, sir.

23 Q. What was the ground like where that
24 happened?

25 A. About the same material, grass, sand,

1 gravel.

2 Q. Parking lot?

3 A. Yes, sir, still in the parking lot.

4 Once he was on the ground, I sat on him, put his
5 hands behind his back and held him there.

6 Q. Was he face down?

7 A. Yes, sir.

8 Q. Okay. Was he talking to you at the
9 time?

10 A. He was cussing me. I just sat there and
11 waited till the police showed up. And when the
12 officers came around the corner, I started to get
13 up. They told me, no, they want to get him in
14 handcuffs before I get off of him.

15 Once they put the cuffs on him, I stood
16 up. They asked me to go speak with the other
17 officer, which I did, and gave him my statement of
18 what had happened.

19 Q. What did you tell the officer?

20 A. That he was too drunk to drive. We
21 asked him to sleep in his car, taxi, you know,
22 options for him not to be driving. He refused.
23 He swung at me. I put him to the ground. Then I
24 brought him over here, and that's when we had, you
25 know, someone call y'all.

1 he quit.

2 Q. Tell us how he tried to.

3 A. Just wiggling, trying to get away from
4 me, trying to get his hands unloose from my hands.

5 Q. When you say hands unloose from your
6 hands, were his hands on his stomach, were they
7 behind his back?

8 A. I had them behind his back and gripped
9 as if he were in cuffs.

10 Q. Another question I have: On this
11 incident report -- actually the arrest report, and
12 I'm going to show you -- I'm just going to point
13 to you and read it right here. It says, McBay had
14 a bloody nose. Can you see it right there?

15 A. Yes, sir.

16 Q. Okay. You talked to the officers after
17 this happened, right?

18 A. Yes, sir.

19 Q. Was your memory at that time fresh as
20 far as the things that happened that evening when
21 you talked to the officers?

22 A. Oh, yes.

23 Q. Okay. It says that McBay had a bloody
24 nose. Did he have a bloody nose before the police
25 got there?

1 A. Yes.

2 Q. Okay. How did he get the bloody nose?

3 A. Possibly caused by myself.

4 Q. When you say possibly by yourself, did
5 you see him get in a fight with anybody else in
6 the bar?

7 A. No, sir. It could have been when I put
8 him on the ground.

9 Q. When you first saw Mr. McBay in the
10 parking lot, did he have a bloody nose at that
11 time?

12 A. No.

13 MR. BRENDL:

14 That's all I have.

15 EXAMINATION

16 BY MR. WATTS:

17 Q. Mr. Randazzo, Exhibit 3, again, just
18 look at it. And if you can read starting with
19 Deputy Allen observed, just read that sentence.

20 A. Deputy Allen observed Mr. Randazzo
21 sitting on top of Mr. McBay and noticed that Mr.
22 McBay had a bloody nose. AMR responded, and Mr.
23 McBay refused.

24 Q. And earlier you said that you can't
25 remember whether or not he had a bloody nose, but